Rimaco Pte Ltd v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 162 OF 1986
SINNATHURAY J
2 NOVEMBER 1990

Statutory Interpretation — 'Employer' — Whether appellants fall within definition — Central Provident Fund Act (Cap 36, 1985 Ed), s 2

Words and Phrases — 'Employee' — Central Provident Fund Act (Cap 36, 1985 Ed), s 2

The appellants were charged with committing an offence under s 29(b) of the Central Provident Fund Act (Cap 36, 1985 Ed) ('the Act') in failing to pay contributions to the Central Provident Fund ('CPF') in respect of their employee, namely, Wee Doon Min ('Wee'). They were found guilty and convicted. The prosecution evidence was that Wee was hired by PT Angko as a chief cook on board an oil rig in Indonesia. Wee's wages were paid by the appellants and the payments were made in Singapore. No contributions to the CPF had been made on his behalf by either Angko or Rimaco. Rimaco had undertaken to pay the salaries of certain Singaporean workers of Angko, including that of Wee. The key issue was whether the appellants were responsible for the payment of wages to Wee on behalf of Angko.

Held, dismissing the appeal:

(1) The terms 'manager, agent' are to be distinguished from 'person responsible for the payment of wages' as first, the trend of the courts today is to limit the application of the ejusdem generis rule, especially with regards to modern legislation and second, the turn of amendments made to the definition of 'employer' in the Act makes it abundantly clear that the person responsible for the payment of wages to an employee on behalf of an employer is to be distinguished from 'manager, agent'.

(2) Even if the word 'responsible' is to have some meaning other than its ordinary meaning, there is no legal relationship between the appellants and Wee. The word 'responsible' must be given its ordinary and natural meaning. As a matter of fact the appellants had undertaken to be responsible for the wages of certain employees of Angko, including that of Wee.

Case referred to
1 *Midland Bank Ltd* v *Conway Corp* [1965] 1 WLR 1165 (distd)

Legislation referred to
Central Provident Fund Act (Cap 36, 1985 Ed) s 2

N Ganesan (*John Dorai Raj* with him) for the appellants.
Ismail Hamid (Dy Senior State Counsel) for the respondent.

Cur Adv Vult

Sinnathuray J: At the conclusion of the hearing, there is only one issue for determination in this appeal and that is whether the appellants, Rimaco Private Ltd ('Rimaco'), are employers within the meaning of the word 'employer' in s 2 of the Central Provident Fund Act (Cap 36, 1985 Ed) ('the Act'). Before I deal with the issue, it is necessary that I state what are now the undisputed facts.

The appellants claimed trial to four similar charges in the magistrate's court, one of which is as follows:

> You, Rimaco Private Ltd, are charged that you on or about 15 November 1979 at Singapore did fail to pay contributions to the Central Provident Fund Act for the month of October 1979 in respect of your employee, namely, Wee Doon Min, within the period prescribed by reg 2(1) of the Central Provident Fund Regulation 1968, to wit, within 14 days from 1 November 1979, and thereby committed an offence under s 29(b) and punishable under s 32 of the Central Provident Fund Act.

They were found guilty and convicted on all four charges and fined $200 on each charge. They were also ordered to pay arrears of CPF contributions of $55,187.88.

The prosecution evidence was that sometime in July 1977 Wee Doon Min ('Wee') came to know that there was a vacancy for the position of a chief cook on board an oil rig in Indonesia. He went to Rimaco Private Ltd at 36-G Prinsep Street, the office of the appellants. In an interview, he was found suitable, he was offered a letter of appointment and he accepted. For the purpose of the Act, Wee was employed as a seaman.

Wee worked for PT Angko till early 1982. His wages were paid by Rimaco. The payments were made in Singapore. Throughout this period, no contributions to the CPF had been made on his behalf by either Angko or Rimaco.

As to how it came about that Rimaco paid the wages of Wee, there is considerable oral evidence, but for my purpose I need only to refer to some of the documentary evidence. There is a letter (P10) dated 12 June 1976, from Angko addressed to Rimaco. The relevant portion reads as follows:

> Tony, I truly hope that you will be able to help me resolve a problem — [the problem he refers to is payment of wages of Singaporeans who were employed by Angko] — by agreeing to pay the Singaporean crew on my behalf, as Rimaco had been our main supplier for the past many years. If you are agreeable, my company will be only too pleased for you to invoice us at cost plus 5%, based on the total amount of salaries paid per month.

In response to this letter the managing director of Rimaco, Tony Chua, replied by letter (P11) seven days later. The relevant portion is this:

> ... after due consideration, we are pleased to be of further service to you and as a gesture of appreciation for your support and patronage and as an extension of our service, we are prepared to undertake the payment of crew salaries to your Singaporean employees at no cost to your goodselves.
>
> Please let us have a crew list of your Singaporean employees, stating their full names, basic salaries and whether they are to be paid on a bi-monthly or monthly basis. Kindly keep us informed of any change in employment status, ie termination, resignation, increment, new employment, etc.

The final word on this topic was a letter (P12) from Angko dated 26 June 1976. The material matters in the letter are these:

> Thank you very much for your letter dated 20 June. I am indeed very grateful for your very kind and generous gesture ... I have enclosed herewith a crew list for your action ... I have also instructed all my Singaporean crew to call at your office at 36-G Prinsep Street on the 28th of each month for their salaries.

Some seven years later, when the Central Provident Fund Board started investigating into this case, Rimaco wrote a long letter (P20) dated 30 September 1983 to the general manager of the Board. The letter states fully the factual position. Put in one sentence, Rimaco admitted that they had undertaken to pay the salaries of certain Singaporean workers in Angko, including that of Wee.

Though at the hearing in the magistrate's court some of these facts remained in issue, at the hearing of the appeal, Mr Ganesan for the appellants has properly said that there can be no doubt it was agreed that Wee was to come to Singapore to collect his wages at the appellants' office. He also accepted that though Wee was an employee of Angko in Indonesia, he was an employee under the Act.

On these facts, before I deal with the issue raised in this appeal, it is necessary that I refer to the definition of an 'employer' in s 2 of the Act. The term 'employer' is defined in four paragraphs. For the purpose of this appeal, the relevant paragraph is (c). It reads as follows:

> 'employer' means —
>
> (c) any manager, agent or person responsible for the payment of wages to an employee on behalf of an employer.

So, the question is: were the appellants responsible for the payment of wages to the employee, Wee, on behalf of the employer, Angko? If the appellants were, then, of course, the appellants were liable to pay the CPF contributions for Wee.

Mr Ganesan puts forward two arguments on the submission that the appellants were not liable. First, there is the legal argument that the definition ought to be interpreted under the ejusdem generis rule: the person responsible for the payment must belong to the same genus of persons as manager or agent, that is to say, he must be a person capable of running the affairs of an employer, either for a specific reward or under a specific contractual obligation. He urges upon me that there has got to be a nexus between the actual employee and the particular person responsible for payment of wages.

I regret to say I cannot agree with Mr Ganesan on this legal argument. First, without looking into the background of the Act as to how a 'person responsible for the payment of wages to an employee on behalf of an employer' came to be included in the definition, I am of the view that 'manager, agent' is to be distinguished from 'person responsible for the payment of wages'. The latter person can be altogether a different kind of person from a manager or an agent. Here, I agree with the submission of Mr Hamid for the respondent that in the construction of a clause, like the one before me, a piece of modern legislation, quite unlike old legislation of many decades ago, the trend of the courts today is to limit the application of the ejusdem generis rule. In this case, I am of the the view that the legislature by introducing the word 'or' after 'manager', 'agent' has clearly intended that besides a manager and an agent it envisages some other persons to be an employer under the Act and this would be anyone who makes himself responsible for the payment of wages to an employee on behalf of an employer.

The second reason as to why I cannot accede to the submission is by a consideration of the amendments that have been made to the definition of 'employer' in the Act which Mr Hamid has referred to in his submission. The point was also raised by Mr Bala Reddy for the prosecution in his written submission before the learned magistrate. Both counsel referred in some detail to the amendments that had been made to the term 'employer' over the years. I agree with the submissions that the turn of amendments made to the definition of 'employer' in the Act makes it abundantly clear that the person responsible for the payment of wages to an employee on behalf of an employer is to be distinguished from 'manager, agent'. Under the last limb the definition has created a separate and distinct category of persons from that of 'manager, agent' who are to be considered an employer under the Act. The term 'employer' has been given an extended meaning under the Act: the person paying the wages to an employee need not be the person with whom an employee had entered into a contract of service.

I turn now to the other argument of Mr Ganesan for the appellants. It is this. He says that the word 'responsibility' must be given a legal meaning, it must be envisaged under the Act to import a legal responsibility. The legal responsibility he seeks is that in order to hold the appellants liable, the employee must have a legal right to recover his wages from the appellants, if the employer, Angko, had defaulted in the payment of the wages. It must be proved, said counsel, that the appellants had a duty to look after the interest of Wee and should anything go wrong the appellants had to account to Wee. As there was no evidence that the appellants owed any legal responsibility to Wee, the appellants were not liable to pay the CPF contributions for Wee and therefore they cannot be found guilty on the charges against them.

Mr Hamid for the respondent strenuously resisted this submission. He argued that the word 'responsibility' does not have a legal meaning; it must be given its ordinary and natural meaning. He said that 'responsibility' is an issue of fact.

In my view this argument for the appellants also fails. To begin with, the word used in the definition is not 'responsibility' but 'responsible'. For another, let me say that the case of *Midland Bank Ltd* v *Conway Corp*[1] has no relevance to the present case. That was a case which concerned the relationship of banker and customer. In the present case, there is no special relationship between the appellants and the employee, Wee. The relationship created by the definition of 'employer' in the Act was between the appellants and the employer, Angko, and not between the appellants and the employee, Wee, for the definition states that an employer is a person who is responsible to pay the wages of an employee for an employer.

On the facts, Rimaco had made itself responsible, for whatever reasons, to pay the wages for Angko. If for some reasons Rimaco does not pay for Angko, the dispute that would arise would be between the two of them and it would have nothing to do with the employee of Angko. If Wee turns up at Rimaco's office in Singapore and asks for the wages owing to him by Angko, Rimaco could well say, 'Yes, I had agreed to pay on behalf of Angko but for reasons which do not concern you I am not going to pay your wages now for Angko. You must look to Angko for your wages.' Can it be said that Wee has right of redress against Rimaco? I think not.

So, even if the word 'responsible' is to have some meaning other than its ordinary meaning, it follows from what I have said that there is no legal relationship between the appellants and Wee. But, I am of the view that 'responsible' must be given its ordinary and natural meaning. It is a word that can have several meanings depending on the context in which it is used. In the definition of 'employer' I understand the word to mean as 'answerable' or 'accountable'. It is a question of fact for decision, and that would depend on the facts of the particular case. That is why I have referred to the evidence to show that as a matter of fact Rimaco had undertaken to be responsible for the wages of certain employees of Angko, including that of Wee. Indeed, the evidence is, throughout the time that Wee had worked for Angko, Rimaco had on behalf of Angko paid the wages of Wee.

For these reasons, on the issue raised at the hearing, I must decide against the appellants and the appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Ganesan Carlose & Partners.*

Reported by *Kevin Mathews*

Goh Jong Cheng v MB Melwani Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1558 OF 1982
CHAO HICK TIN JC
12 OCTOBER 1990

Land Law — Equitable mortgage — Deposit of title deeds — Whether registered proprietor of property knowingly handed title deeds to son to enable him to use it as security by way of mortgage to the defendant — Non est factum — Whether applicable to vitiate alleged creation of equitable mortgage by deposit of title deeds

The plaintiff was the registered proprietor of a piece of property (the 'property'). The defendant had extended credit facilities to a company (the 'company') of which the plaintiff's son was a director. The plaintiff had handed the title deeds of the property to her son and had later been accompanied by her son to the solicitor's office whereby she signed two sets of a mortgage deed mortgaging the property to the defendant. The same solicitor acted for the plaintiff and the defendant in the transaction, and the plaintiff's son acted as an interpreter between the solicitor and the plaintiff. The plaintiff's son subsequently requested a return of the mortgage deed from the solicitor, and the deeds were returned to the plaintiff. The solicitor later lodged a caveat in the registry against the property in respect of the defendant's interest.

The plaintiff sought a declaration that no equitable mortgage had been created by the deposit of the title deeds and that the caveat lodged by the defendant against the property be cancelled. The issue before the court was whether the plaintiff did knowingly hand the title deeds of the property to her son and whether the doctrine of 'non est factum' applied.

Held, allowing the plaintiff's application:

(1) There are two factors which must be present before a party may successfully plead non est factum:

(i) The documents signed must be significantly different from that which the signer believed them to be.

(ii) The signer must not be negligent when he signed the document.

(2) The plaintiff successfully pleaded non est factum as:

(i) The plaintiff did not know when she handed the title deeds to her son that they were to be used as security for credit facilities to be granted by the defendant to the company.

(ii) Although the solicitor may have explained the general nature of the deed to the plaintiff, the solicitor did not explain the mortgage deed sentence by sentence to the plaintiff in Hokkien.

(3) (Obiter) Extra care on the part of solicitors was required in dealings with elderly or illiterate persons, particularly when such persons are assuming responsibilities or liabilities of others. It was vitally important to ensure that such a person fully understood what he was about to do and that there was no undue influence or deception. Only a disinterested person should be asked to be an interpreter. And when a solicitor was acting for all parties on a transaction he must be conscious of a conflict situation arising and should not hesitate whenever there was a reasonable doubt to ask the person to seek independent legal advice.

Cases referred to

1 *Thoroughgood's Case* (1584) 2 Co Rep 9a; 76 ER 408 (folld)

2 *Saunders* v *Anglia Building Society* [1971] AC 1004 (folld)